

The Orissa Gazette

**EXTRAORDINARY
PUBLISHED BY AUTHORITY**

No. 586 CUTTACK, WEDNESDAY, MAY 6, 2009/BAISAKHA 16, 1931

DEPARTMENT OF ENERGY

NOTIFICATION

The 30th April 2009

No. 4844—R & R-III-45/2008—The State Government in the Department of Energy had framed guidelines for laying cable network for Cable TV operation vide Energy Department Notification No. 18271, dated the 11th October 2001 and No. 148, dated the 4th January 2002.

The provisions relating to Clause 16 of the guidelines of “One Pole One Cable” of the said notification was challenged in the Hon’ble High Court in W.P.(C) No. 11762 of 2006 by M/s Variety Entertainment (Pvt.) Ltd. The Hon’ble High Court in an interim order, dated the 6th November 2006 referred the impugned guidelines to Orissa Electricity Regulatory Commission (OERC) for detailed examination on the issues framed by the Hon’ble Court. The OERC after hearing the parties and considering the views of experts submitted its report, dated the 8th January 2007 to the Hon’ble Court recommending use of single optic fibre cable by multiple operators for optimum utilization of national assets.

The Hon’ble High Court while finally disposing of the W.P. (C) No. 11762 of 2006 on dated the 16th May 2008 held that the agreement entered into between Distribution Companies and one cable operator are not consistent with the requirements of law, hence, are invalid and directed the State Government to issue necessary guidelines for setting of the norms and standards for selecting cable operators, who will operate their cable network through the electrical poles of distribution licensee so as to ensure level playing field,

The Hon’ble High Court have further observed that it is always open to the State Government and its agencies to make periodical review of its policy and bring changes in any manner it may think appropriate .

In the above backdrop, a technical committee was constituted comprising officials from Telecommunication, Electrical and Finance discipline. The committee visited several States and submitted their reports stating that multiple cables (both Optical Fibre Cable and Coaxial) have been drawn in a single electric pole by different cable operators.

Keeping in view the aforesaid observations of the Hon’ble High Court and technical committee report, the State Government reviewed the guidelines issued vide notification No.18271,

dated the 11th October 2001 and No.148, dated the 4th January 2002, and decided that the stipulation of running one cable alone on one electric pole be withdrawn and desired to allow cable operators to run more than one cable in one electric pole for the reasons to allow level playing field to all operators in order to ensure better deal to the consumer for the reasons that,—

- (i) advancement in technology has reduced the weight of signal carrying cables;
- (ii) because of the advancement of technology, the possibility of signal interference with each other in two closely placed coaxial cables has reduced to a manageable limit, whereas, the same does not exist in Optic Fibre Cables (Optical Fibre Cable);
- (iii) as Telecom Regulatory Authority of India (TRAI) has always been considering the promotion of fair competition in Cable TV services for the benefit of the general consumers; and
- (iv) as per the report of the Technical Committee revealed that multiple cables (both Optical Fibre Cable & Coaxial) have been drawn in one electric pole by different cable operators in several States .

After careful consideration, the Government of Orissa hereby issues the following guideline for selecting cable operators to lay cables on the electric poles for cable TV operation, internet access and other uses.

The guideline consists of three parts; first part relating to selection of Multi Service Operator (MSO); the second part relating to Local Cable Operator (LCO) and third part containing general conditions.

Part-I

MULTI SERVICE OPERATOR (MSO) :

- (1) Distribution Company shall invite Expression of Interest (EOI) from intending MSOs. to lay Optical Fibre Cable in inter and intra-city main trunk routes on Build Own and Operate (BOO) model for a period of fifteen years by using the network of Distribution Companies for multipurpose use such as Cable TV signal transmission. broad band data communication, IP telephony, etc. The detail bidding documents for inviting Expression of Interest envisaging the minimum net-worth and other Financial, Commercial and Technical Parameters shall be prepared by the respective Distribution Companies based on commercial prudence and eligibility criteria contained in this guideline.
- (2) The Distribution Companies will shortlist MSOs. after evaluation of their experience, net-worth, credit-worthiness, etc. by assigning reasons. Thereafter, the price bid may be invited from amongst the shortlisted MSOs. The bidder offering highest bid shall be selected along with other bidders in total three in order of merit as per original financial bid subject to their agreement and acceptance of the highest bidding price. The two MSOs./other than the highest bidder if agree and accept the highest bid for the entire area then they being selected will be allowed to operate along with highest bidder.
- (3) The MSOs. shall offer its bid towards lease rental of all electric poles of distribution licensee for the entire area. Initially, the payment of lease rental shall be made by MSOs. for the

period of three years in advance in one go. Thereafter, it shall be paid annually in advance. The MSO shall not sub-lease the right to any other person

- (4) While inviting Expression of Interest from the intending MSO, the Distribution Companies may decide the percentage of stands of the Optical Fibre Cable to be earmarked by MSOs. in favour of the Distribution Companies free of cost for their own use for Supervisory Control And Data Acquisition (SCADA) or for any other purpose.
- (5) One MSO shall not self signal and give Right of Way (ROW) for using electric poles for laying cables to more than one LCO in any particular area.
- (6) The MSOs. shall lay Optical Fibre Cable following the Technical Standards and Safety Guidelines issued by Government of Orissa and Distribution Company. Utmost care has to be taken for the safety of the workmen of both the Distribution Companies and that of the operators and the general public as well. MSO shall also ensure safety and security of all installations of the Distribution Companies for which they have been allowed to run their cable networks.
- (7) The MSO shall arrange inspection of all its installations before completion of each financial year by the concerned Electrical Inspector of the area and submit the certificate to the concerned Distribution Companies before the commencement of next financial year, failing which the MSO shall not be allowed to carry out its operation along with other statutory actions as provided in the Rules.
- (8) The other mode of Right of Way (ROW) wherever required to lay cables (other than in electric pole) in certain places like road crossing and river crossing, etc. the same shall be obtained by the MSOs. from the Competent Authority.
- (9) If the Municipality Authority/Grama Panchayat for the purpose of beautification or for any other reason decides that the cable shall be laid underground in any particular area. the decision of Municipality Authority/Grama Panchayat is binding on MSO/ LCO. In case, any shifting or alteration in the position of the laid cable is required due to shifting of poles because of widening of roads and construction of flyovers, etc. the MSO shall do the same at its own cost within a specified period.
- (10) Minimum eligibility requirement of MSO.

The MSO shall have,—

- (i) at least a 'C'-Class Internet Service Provider (ISP) ;
- (ii) license as granted by the Department of Telecommunications, Government of India, as it is required for the Broad Band Communication Services;
- (iii) a valid postal license for the distribution of the Cable TV signal as per the Cable Television Network (Regulation) Act, 1995 and all the Rules made thereunder;
- (iv) past experience of minimum period of 3 years for Cable TV distribution service and or Broad Band Service;

- (v) matching technical standards set by the Bureau of Indian Standards (BIS) for Cable TV network ;
- (vi) Service Tax Registration by the Central Excise and Customs Department ;
- (vii) Entertainment Tax Registration as per the Government of Orissa Rules ;
- (viii) no due certificate on payment of Inspection Fee, Electricity dues, etc. from the concerned authorities.

Part-II

Local Cable Operator (LCO) :

- (1) LCO will be selected by MSO who will be receiving the signal from MSO and distribute the same to the last mile subscribers at their premises in Residential / Commercial areas. The MSO will grant Right of Way (ROW) to only one LCO in a particular area for laying Coaxial/Optical Fibre Cables by using the electrical poles .
- (2) In case the LCO is required any other means for carrying the cables other than the poles of Distribution Companies, the permission from Competent Authority shall be obtained by the LCO itself.
- (3) If the Municipality Authority/Grama Panchayat for the purpose of beautification or for any other reason decides that the cable shall be laid underground in any particular area, the decision of Municipality Authority/Grama Panchayat is binding on the LCO. In case any shifting or alteration in the position of the laid cable is required due to shifting of poles because of widening of roads and construction of flyovers, etc. the MSO shall do the same at its own cost within a specified period.
- (4) The LCO shall lay Coaxial Cable/Optical Fibre Cable following the Technical Standards and Safety Guidelines issued by Government of Orissa and Distribution Company. Utmost care has to be taken for the safety of the workmen of both the Distribution Companies and that of the operators and the general public as well. LCO shall also ensure safety and security of all installations of the Distribution Companies for which they have been allowed to run their cable networks.
- (5) The LCO shall arrange inspection of all its installations before completion of each financial year by the concerned Electrical Inspector of the area and submit the certificate to the concerned Distribution Company before the commencement of next financial year, failing which the LCO shall not be allowed to carry out its operation along with other statutory actions to be taken as provided in the Rules.
- (6) Minimum eligibility requirement of LCO :
The LCO shall have,—
 - (i) a valid postal license for the distribution of the Cable TV signal as per the Cable Television Network (Regulation) Act, 1995 and all the Rules made thereunder ;
 - (ii) matching technical standards set by the Bureau of Indian Standards (BIS) for cable TV network ;

- (iii) Service Tax Registration by the Central Excise and Customs Department ;
- (iv) Entertainment Tax Registration as per the Government of Orissa Rules ;
- (v) no due certificate on payment of Inspection Fee, Electricity dues, etc. from the concerned authorities.

Part-III

General Conditions :

- I. The selected MSO would enter into an agreement with the distribution licensee for a period of 15 years with provision that the terms and conditions including rates shall be reviewed after each 5 years.
- II. The rights vest with the Distribution Company to terminate the agreement even before the expiry of the terms and conditions of the agreement in case of any default or breach of any term and condition if it is found in any way detrimental to the interest of the Distribution Companies or the State's interest, after giving reasonable opportunity of show cause.
- III. In case of any differences or disputes relating to or arises out of the above agreement, the same shall be referred to Distribution Company for decision at the first instance. If the Distribution Company and the licensee cannot settled the issue amicably, then, the same shall be referred to Government in Energy Department, whose decision shall be final and binding on both the parties.
- IV. Any financial loss caused to the Distribution Company while installing the cable either by damage to Distribution Company's properties or power failure have to be borne by the MSO.
- V. The cable operator will indemnify and keep harmless the Distribution Company against any expenses that may be incurred in connection with any suit or other proceeding filed in any court or before any authority in respect of any matter related to and / or arising out of the distribution of signal of such operator using the poles of Distribution Company.
- VI. Any deviation or breaches of the guideline will entail cancellation of agreement.
- VII. Any dispute arising between Distribution Companies, MSOs. and LCOs. shall be adjudicated by the Court located at Bhubaneswar and Cuttack only.
- VIII. All the notifications, guidelines, circulars issued earlier in this regard are here by superseded/repealed.

By order of the Governor

P. K. JENA

Commissioner-*cum*-Secretary to Government